

WINDELS MARX LANE & MITTENDORF, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
(212) 237-1000  
Howard Simon (hsimon@windelsmarx.com)  
Leslie S. Barr (lbarr@windelsmarx.com)

Hearing: July 22, 2010 @ 9:30 a.m.  
Objections: June 7, 2010  
Reply: July 2, 2010

- and -

NUTTER MCCLENNEN & FISH LLP  
Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
(617) 439-2390  
Peter Nils Baylor (pbaylor@nutter.com)

*Attorneys for Tyco Adhesives LP*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	:
	:
DELPHI CORPORATION, <i>et al.</i> ,	:
	:
-----X	:
DELPHI CORPORATION, <i>et al.</i> ,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
TYCO, TYCO ADHESIVES, TYCO	:
ELECTRONICS – RAYCHEM, TYCO	:
ELECTRONICS CORP., TYCO	:
ELECTRONICS CORPORATION, TYCO	:
ELECTRONICS IDENTIFICATION TYCO	:
ELECTRONICS LOGISTICS AG, and	:
TYCO/ELECTRONICS,	:
	:
Defendants.	:
-----X	

Chapter 11  
Case No. 05-44481 [RDD]  
  
Jointly Administered  
  
Adv. Pro. No. 07-02790 [RDD]

**NOTICE OF MOTION OF TYCO ADHESIVES LP, AND JOINDER WITH MOTIONS  
OF FIN MACHINE CO. LTD. AND WAGNER-SMITH COMPANY, FOR AN ORDER:**

- (I) **PURSUANT TO FED. R. CIV. P. 60 AND FED. R. BANKR. P. 9024 VACATING PRIOR ORDERS ESTABLISHING PROCEDURES FOR CERTAIN ADVERSARY PROCEEDINGS, INCLUDING THOSE COMMENCED BY THE DEBTORS UNDER 11 U.S.C. §§ 541, 544, 545, 547, 548, OR 549, AND EXTENDING THE TIME TO SERVE PROCESS FOR SUCH ADVERSARY PROCEEDINGS, AND**
  - (II) **PURSUANT TO FED. R. CIV. P. 12(c) AND FED. R. BANKR. P. 7012(c), DISMISSING THE ADVERSARY PROCEEDING WITH PREJUDICE FOR FAILURE TO STATE A CAUSE OF ACTION BECAUSE IT IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS, AND**
  - (III) **PURSUANT TO FED. R. CIV. P. 12(c) AND FED. R. BANKR. P. 7012(c), DISMISSING THE ADVERSARY PROCEEDING WITH PREJUDICE FOR FAILURE TO STATE A CAUSE OF ACTION BECAUSE IT IS INSUFFICIENTLY PLED, AND**
  - (IV) **DISMISSING THE ADVERSARY PROCEEDING ON THE GROUND OF JUDICIAL ESTOPPEL, AND**
  - (V) **DISMISSING THE ADVERSARY PROCEEDING ON THE GROUND OF LACHES, OR**
  - (VI) **IN THE ALTERNATIVE, PURSUANT TO FED. R. CIV. P. 12(e) AND FED. R. BANKR. P. 7012(e), DIRECTING A MORE DEFINITE STATEMENT OF THE PLEADINGS.**
- 

**PLEASE TAKE NOTICE THAT:**

1. A hearing (the “**Hearing**”) will be held before The Honorable Robert D. Drain, United States Bankruptcy Judge, in his courtroom at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, **on July 22, 2010 at 10:00 a.m., prevailing Eastern time (the “Hearing Date”)**, or as soon thereafter as counsel may be heard, to consider the motion and joinder with the motions of Fin Machine Co., Ltd. and Wagner-Smith Company (the “**Motion**”) of Defendant Tyco Adhesives, L.P. (“**TA**”), by and through its counsel, Windels Marx Lane & Mittendorf, LLP, for an Order:

- (i) vacating, with respect to TA, pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, the orders of this Court (collectively, the “**Extension Orders**”), dated

August 16, 2007 (Doc. No. 9105); March 28, 2008 (Doc. No. 13277); April 30, 2008 (Doc. No. 13484); and October 22, 2009 (Doc. No. 18999), on the grounds that each such order is void against TA by virtue of the Debtors' and Plaintiffs' intentional failure to provide TA with notice of the Motions upon which they were granted and that the Extension Orders were improvidently made; and

- (ii) dismissing, with prejudice, the Adversary Proceeding against TA, pursuant to Fed. R. Civ. P. 12(c) and Fed. R. Bankr. P. 7012(c) on the ground that it is barred by the two-year statute of limitations imposed by 11 U.S.C. § 546(a) and, therefore, fails to state a claim upon which relief may be granted; and
- (iii) pursuant to Fed. R. Civ. P. 12(c) and Fed. R. Bankr. P. 7012(c), dismissing the Adversary Proceeding against TA with prejudice for failure to state a cause of action because it is insufficiently pled; and
- (iv) in the alternative, dismissing, with prejudice, the Adversary Proceeding against TA on the ground that it is barred by judicial estoppel; and
- (v) in the alternative, dismissing, with prejudice, the Adversary Proceeding against TA on the ground of laches; or,
- (vi) in the alternative, pursuant to Fed. R. Civ. P. 12(e) and Fed. R. Bankr. P. 7012(e), directing a more definite statement of the pleadings; and
- (vii) granting TA the costs and expenses of responding to this Adversary Proceeding, including, without limitation, attorneys' fees.

2. The Motion with exhibits is on file with the Court and may be obtained through the Internet at the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) (for which a PACER password is required), or from the undersigned upon request.

3. Responding papers, if any, must be filed with the Court and served so as to be **received no later than June 7, 2010 at 4:00 p.m., prevailing Eastern time**, by (i) the undersigned attorneys for TA, (ii) the Bankruptcy Judge (a hard copy clearly marked “Chambers Copy” must be delivered to the Court to the attention of Chambers of The Honorable Robert D. Drain), (iii) the Debtors, DPH Holdings Corp. (f/k/a Delphi Corporation, et al.), Attn: John Brooks, 5725 Delphi Drive, Troy, Michigan 48098; (iv) Butzel Long, Attn: Cynthia J. Haffey, Esq., 150 W. Jefferson Avenue, Suite 100, Detroit, Michigan 48226; (v) Butzel Long, Attn: Eric Fisher, Esq., 380 Madison Avenue, 22<sup>nd</sup> Floor, New York, New York 10017; (vi) Togut, Segal & Segal LLP, Attn: Frank Oswald, Esq., One Penn Plaza, Suite 3335, New York, New York 10119; (vii) attorneys for the Official Committee of Unsecured Creditors, Latham & Watkins, Attn: Mark A. Broude, Esq. and Robert J. Rosenberg, Esq., 885 Third Avenue, New York, New York 10022, and Warner Stevens, L.L.P., Attn: Michael D. Warner, Esq., 301 Commerce Street, Suite 1700, Fort Worth, Texas 76102; and (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 22<sup>nd</sup> Floor, New York, New York 10004. Unless responding papers are received by that date and time, the relief sought in the Motion may be deemed uncontroverted and an Order granting the relief may be signed.

4. Responding papers must be filed on accordance with the Court’s Electronic Filing System Rules (General Order M-242) which can be obtained on the Court’s website [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). Parties without legal representation or access to the Internet may file documents in paper form, in accordance with procedures set forth in the Court’s Local Rules which allow such parties to file documents as follows: DISKETTE, PDF FORMAT: If you are not equipped or have not registered to file over the Internet, you must submit your documents on a diskette, in PDF format. Adobe Acrobat software will provide you with the ability to create documents in PDF format; additionally, word processing programs such as Corel WordPerfect

and Microsoft Word include a built-in conversion utility. Use a separate diskette for each filing. Submit the diskette in an envelope with the case name, case number, type and title of the document, and the file name on the diskette. DISKETTE, NON-PDF FORMAT: If you are unable either to file over the Internet or create documents in PDF format, you must submit your documents on a diskette in one of the following formats: Corel WordPerfect, Microsoft Word, DOS text (ASCII) or a scanned image of your filing. Use a separate diskette for each filing. Submit the diskette in an envelope with the case name, case number, type and title of the document, and the file name on the diskette.

5. The Hearing may be adjourned from time to time without notice other than by announcement in Court at the Hearing.

Dated: New York, New York  
May 14, 2010

WINDELS MARX LANE & MITTENDORF, LLP

By: /s/ Leslie S. Barr  
Howard L. Simon ([hsimon@windelsmarx.com](mailto:hsimon@windelsmarx.com))  
Leslie S. Barr ([lbarr@windelsmarx.com](mailto:lbarr@windelsmarx.com))  
156 West 56th Street  
New York, New York 10019  
Telephone (212) 237-1034  
Facsimile (212) 262-1215

- and -

Dated: Boston, Massachusetts  
May 14, 2010

NUTTER MCCLENNEN & FISH LLP  
Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Telephone (617) 439-2390  
Facsimile (617) 310-9390  
Peter Nils Baylor ([pbaylor@nutter.com](mailto:pbaylor@nutter.com))

*Attorneys for Tyco Adhesives, L.P.*